

S.C., Appellant

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, Tracy, CA, Employer**

Appearances:

Paul H. Felser, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 10, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish continuing disability on or after October 3, 2017 causally related to her accepted October 20, 1998 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 20, 1998 appellant, then a 36-year-old transportation clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left upper extremity injury while in the performance of duty. She indicated that she was stripping bills of lading when she felt a pop in her left wrist and numbness in her left fingers. On October 21, 1998 appellant began performing modified-duty work without wage loss. OWCP initially accepted appellant's claim for left wrist strain. Appellant stopped work on April 16, 1999 and on the same date she underwent OWCP-approved arthroscopy with debridement and de Quervain's tendon release of the left wrist. She returned to modified-duty work on June 4, 1999. Appellant had last worked on May 2, 2003 and she received wage-loss compensation for disability from work on the supplemental rolls commencing May 3, 2003.⁵ On July 18, 2008 OWCP expanded the accepted conditions to include degeneration of the triangular fibrocartilage complex (TFCC) of the left wrist.

In February 2010, appellant began treatment with Dr. Theodore Knatt, a Board-certified orthopedic surgeon. On May 16, 2014 Dr. Knatt performed OWCP-authorized left upper extremity surgery, including transposition of the left ulnar nerve, ulnar tunnel release, tenosynovectomy, carpal tunnel release, and cubital tunnel release. OWCP expanded the accepted conditions to also include left carpal tunnel syndrome and left ulnar lesion.

On June 13, 2016 Chase Roy, a physical therapist, conducted a functional capacity evaluation (FCE) to evaluate appellant's ability to perform various physical functions. He noted that, during the FCE, appellant self-limited her bilateral wrist motion, standing, walking, squatting, and kneeling. Mr. Roy indicated that the FCE results showed that appellant was functioning at the sedentary-light physical demand level with the ability to engage in occasional lifting of 10 to 15 pounds. Mr. Roy advised that appellant should be limited to a maximum of three hours of repetitive hand use during an eight-hour workday.

In a March 30, 2017 work status report, Dr. Knatt indicated that appellant could return to work within the restrictions delineated in the June 13, 2016 FCE. In a March 30, 2017 narrative report, he characterized appellant's condition as stable and improving, and diagnosed paresthesias and left forearm pain. Through an attachment to an April 19, 2017 letter, Brenda Dumas, appellant's rehabilitation counselor, provided Dr. Knatt with a formal job description of the transportation clerk position. The job description noted that the position required handling of documents such as bills of lading, logs, and register files. The section of the job description

⁴ Docket No. 18-1649 (issued March 8, 2019).

⁵ Appellant received wage-loss compensation for disability from work on the periodic rolls commencing May 18, 2003.

detailing the physical demands of the position indicated that the position was primarily sedentary in nature, but that it required some walking as well as some regular and recurring periods of standing at a counter to sort and distribute bills of lading. On April 20, 2017 Dr. Knatt, in response to Ms. Dumas' April 19, 2017 letter, checked a box marked "Yes" in response to the statement, "In my professional medical opinion, [appellant] can return to work as a transportation clerk, as outlined in the attached job description."

In a July 18, 2017 letter, OWCP advised appellant of its proposed termination of her wage-loss compensation benefits, effective October 3, 2017, because she ceased to have disability due to her October 20, 1998 work injury. It noted that it would not terminate her entitlement to medical benefits related to treatment of her October 20, 1998 work injury. OWCP indicated that it was relying on Dr. Knatt's opinion that appellant could perform her date-of-injury job, *i.e.*, transportation clerk.

By decision dated October 2, 2017, OWCP terminated appellant's wage-loss compensation, effective October 3, 2017, because she had no disability due to her October 20, 1998 work injury after that date. It found that the weight of the medical evidence regarding work-related disability rested with the opinion of Dr. Knatt. Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated June 5, 2018, the hearing representative affirmed the October 2, 2017 termination decision.

Appellant appealed to the Board and, by decision dated March 8, 2019,⁶ the Board affirmed OWCP's June 5, 2018 decision. The Board determined that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective October 3, 2017, as she ceased to have disability causally related to her accepted October 20, 1998 employment injury. OWCP found that the weight of the medical evidence rested with the opinion of Dr. Knatt, the attending physician, noting that his opinion established that appellant had no disability on or after October 3, 2017 due to her October 20, 1998 employment injury because she was capable of returning to her date-of-injury position as a transportation clerk.

On July 2, 2020 appellant, through counsel, requested reconsideration of her claim. Counsel argued that appellant continued to have disability after October 3, 2017 due to her October 20, 1998 employment injury. Appellant submitted the findings of a September 13, 2018 electromyogram and nerve conduction velocity (EMG/NCV) testing of her upper extremities, which showed electrodiagnostic evidence of mild demyelinating median neuropathy, carpal tunnel syndrome, on the right, and clinical evidence of mild complex regional pain syndrome, resembling type 2. In an October 9, 2018 report, Dr. Knatt indicated that appellant's medical condition was stable and improving. He noted that he advised appellant that she could have causalgia, regional pain syndrome, or reflex sympathetic dystrophy of her left upper extremity. Dr. Knatt indicated that appellant would be seen by a hand surgeon for her old TFCC injury of the left wrist.

In a November 9, 2018 report, Dr. Brandon Donnelly, an attending Board-certified orthopedic surgeon, diagnosed status post left carpal and cubital tunnel syndrome with dysesthetic pain of the left upper extremity, and left wrist pain with possible ulnar impaction. He further advised that appellant did not have full classic symptoms of complex regional pain syndrome. The findings of a November 23, 2018 magnetic resonance imaging (MRI) scan of the left wrist

⁶ *Supra* note 4.

contained an impression of radial-sided tear of the TFCC with distal radio-ulnar joint effusion. On December 7, 2018 Dr. Donnelly diagnosed left ulnocarpal wrist pain with TFCC chronic injury and dysesthetic pain in the left arm.

In a December 12, 2018 report, Dr. Zeringue diagnosed left arm complex regional pain syndrome and left ulnar carpal wrist pain with TFCC chronic injury. On February 21, 2019 he indicated that appellant reported that her neck and left arm pain were better with medication. Dr. Zeringue diagnosed ulnar neuritis and complex regional pain syndrome. In a March 21, 2019 report, he diagnosed ulnar neuritis, complex regional pain syndrome, and history of TFCC injury. Dr. Zeringue indicated that he still recommended that appellant work eight hours per day avoiding repetitive use of the left arm for more than three hours per day “as her FCE had recommended back in 2016.” He further recommended that appellant engage in occasional standing, sitting, squatting, and kneeling as appropriate. In July 10 and October 9, 2019 reports, Dr. Zeringue diagnosed ulnar neuritis, complex regional pain syndrome, and history of TFCC injury and indicated that there was no change in appellant’s work restrictions.

In a February 19, 2020 report, Dr. Zeringue advised that appellant had diagnoses of TFCC injury, ulnar neuritis, and complex regional pain syndrome, and noted that he had reviewed records containing several work-related diagnoses, including neck pain, neuritis/neuralgia, cervical radiculopathy, and cervical spondylosis. He indicated that appellant had an FCE on June 13, 2016, which showed that she was functioning at a sedentary/light physical demand capacity with occasional lifting of 10 to 15 pounds. Dr. Zeringue noted that the FCE indicated that appellant’s nonmaterial handling capacities should be limited to a maximum of three hours of repetitive hand use out of an eight-hour workday. He advised that he had reviewed a job description of appellant’s job and that appellant mentioned that, when large trucks came in, she was required to separate bills for over three hours per day. Dr. Zeringue noted, “[t]his activity would be above the restriction given in the 2016 [FCE]. Therefore, it does not appear that she would be able to perform the job of a transportation clerk.” In May 6 and July 28, 2020 reports, Dr. Zeringue diagnosed complex regional pain syndrome, ulnar neuritis, and TFCC injury.

By decision dated August 10, 2020, OWCP determined that appellant had not met her burden of proof to establish disability from work on or after October 3, 2017 causally related to her accepted October 20, 1998 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee’s benefits.⁷ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁸ Its burden of proof includes the necessity of furnishing rationalized medical

⁷ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁸ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986). In general, the term disability under FECA means incapacity because of injury in employment to earn the wages, which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

opinion evidence based on a proper factual and medical background.⁹ When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.¹⁰ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish continuing disability on or after October 3, 2017 causally related to her accepted October 20, 1998 employment injury.

By decision dated March 8, 2019, the Board affirmed OWCP's June 5, 2018 decision terminating appellant's wage-loss compensation, effective October 3, 2017, as she ceased to have disability causally related to her accepted October 20, 1998 employment injury. The Board notes that it is unnecessary to reconsider the evidence appellant submitted prior to the issuance of OWCP's June 5, 2018 decision because the Board already considered this evidence in its March 8, 2019 decision. Findings made in prior Board decisions are *res judicata* any further review by OWCP under section 8128 of FECA.¹² As noted above, when OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.¹³

Appellant submitted a February 19, 2020 report from Dr. Zeringue who indicated that she had diagnoses of TFCC injury, ulnar neuritis, complex regional pain syndrome, and noted that he had reviewed records containing several work-related diagnoses, including neck pain, neuritis/neuralgia, cervical radiculopathy, and cervical spondylosis. Dr. Zeringue indicated that appellant had an FCE on June 13, 2016, which showed that she was functioning at a sedentary/light physical demand capacity with occasional lifting of 10 to 15 pounds. He noted that the FCE indicated that appellant's nonmaterial handling capacities should be limited to a maximum of three hours of repetitive hand use out of an eight-hour workday. Dr. Zeringue advised that he had reviewed a job description of appellant's job and that appellant mentioned that, when large trucks came in, she was required to separate bills for over three hours per day. He noted, "[t]his activity would be above the restriction given in the 2016 [FCE]. Therefore, it does not appear that she would be able to perform the job of a transportation clerk."

Although he suggested that work-related conditions prevented appellant from performing her date-of-injury job of transportation clerk, Dr. Zeringue's February 19, 2020 report is of limited

⁹ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹¹ *Id.*

¹² *A.B.*, Docket No. 20-1139 (issued June 30, 2021); *M.M.*, Docket No. 18-1366 (issued February 27, 2019). *E.C.*, Docket No. 17-1765 (issued January 24, 2018); *E.L.*, Docket No. 16-0635 (issued November 7, 2016).

¹³ *See supra* note 10.

probative value regarding appellant's claim for work-related disability on and after October 3, 2017 because he did not provide adequate medical rationale in support of his opinion. He failed to identify contemporaneous objective medical findings and did not provide medical rationale to support his opinion that the described work restrictions were necessitated by the accepted October 20, 1998 employment injury. Such medical rationale is particularly necessary because Dr. Zeringue suggested that several conditions that have not been accepted as work related affected appellant's ability to work, including complex regional pain syndrome and cervical radiculopathy/spondylosis. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹⁴ Therefore, this report is insufficient to establish appellant's disability claim.

In a March 21, 2019 report, Dr. Zeringue diagnosed ulnar neuritis, complex regional pain syndrome, and history of TFCC injury. He indicated that he recommended that appellant work eight hours per day avoiding repetitive use of the left arm for more than three hours per day "as her FCE had recommended back in 2016." Although Dr. Zeringue suggested that work-related conditions would prevent appellant from working as a transportation clerk, this report also is of limited probative value regarding appellant's disability claim because he did not provide adequate medical rationale in support of his opinion. As noted, a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹⁵ Therefore, this report also is insufficient to establish appellant's disability claim.

Appellant submitted an October 9, 2018 report from Dr. Knatt who indicated that he advised appellant that she could have causalgia, regional pain syndrome, or reflex sympathetic dystrophy of her left upper extremity. Dr. Knatt noted that appellant would be seen by a hand surgeon for her left TFCC injury. In reports dated December 12, 2018, February 21, July 10, and October 9, 2019, May 6 and July 28, 2020, Dr. Zeringue collectively diagnosed ulnar neuritis, complex regional pain syndrome, and left ulnar wrist pain with history of TFCC chronic injury. In a November 9, 2018 report, Dr. Donnelly diagnosed status post left carpal and cubital tunnel syndrome with dysesthetic pain of the left upper extremity, and left wrist pain with possible ulnar impaction. In a December 7, 2018 report, he diagnosed left ulnocarpal wrist pain with TFCC chronic injury and dysesthetic pain in the left arm. The Board finds, however, that these reports are of no probative value regarding appellant's disability claim because they do not contain an opinion that appellant had disability on or after October 3, 2017 causally related to her accepted October 20, 1998 employment injury. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.¹⁶ Therefore, these reports are insufficient to establish appellant's disability claim.

Appellant submitted the findings of September 13, 2018 EMG/NCV testing of her upper extremities that showed electrodiagnostic evidence of mild demyelinating median neuropathy, carpal tunnel syndrome, on the right; and clinical evidence of mild complex regional pain

¹⁴ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁵ *Id.*

¹⁶ *T.H.*, Docket No. 18-0704 (issued September 6, 2018). See also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

syndrome, resembling type 2. The findings of a November 23, 2018 MRI scan of the left wrist contained an impression of radial-sided tear of the TFCC with distal radio-ulnar joint effusion. However, diagnostic studies lack probative value as they do not address whether an accepted employment condition caused the claimed disability.¹⁷

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed period of disability and her accepted October 20, 1998 employment injury, she has not met her burden of proof.

On appeal counsel argues that appellant's wage-loss compensation should be reinstated because her work restrictions were not consistent with her date-of-injury employment. However, the Board has explained that appellant failed to submit sufficient medical evidence to demonstrate that she had work restrictions necessitated by residuals of her accepted October 20, 1998 employment injury that prevented her from performing the transportation clerk position.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability on or after October 3, 2017 causally related to her accepted October 20, 1998 employment injury.

¹⁷ See A.V., Docket No. 19-1575 (issued June 11, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board